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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,646	08/18/2000	Anthony J. Cipolla	13072	6936

7590 12/22/2003

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EXAMINER

WILSON, JOHN J

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 12/22/2003

24

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/641,646

Applicant(s)

CIPOLLA ET AL.

Examiner

John J. Wilson

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 49-67 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49, 50 and 52-67 is/are rejected.
- 7) ☒ Claim(s) 51 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The indicated allowability of claims is withdrawn in view of the newly discovered reference(s) to Bailey et al (5013240). Rejections based on the newly cited reference(s) follow. It was realized that the broad language of claim 49 reads on merely attaching applicant's device to well known mobile dental devices.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 49, 50, 53, 65 and 67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al (WO 99/37236) in view of Bailey et al (5013240). Jensen shows a light source 42, optical output 38, 40, projection means for handling, see handle in Fig. 2, and connecting means 44 for connecting the light source to the output. Jensen does not show a mobile support structure on which the light source is attached. Bailey teaches a mobile support 110 that includes support for a light gun 131. It would be obvious to one of ordinary skill in the art to modify Jensen to include a mobile support as shown by Bailey in order to better move the device to a desired location. As to claim 50, see wheels 112 of Bailey. The position that the device is intended to be held with respect to a patient is an obvious matter of choice in the intended use of a known structure to the skilled artisan.

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Claim 52 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen et al (WO 99/37236) in view of Bailey et al (5013240) as applied to claim 49 above, and further in view of Hare (5316473). The above combination does not show the range of power density claimed. Hare shows a light base 11c forming an archway and a light generating device as shown that shines light into the archway and can deliver light at an intensity of 250 milliWatts/cm², column 7, line 24. Hare also teaches stronger intensities, however, does not state a distance at which the intensity occurs. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of light intensity as shown by Hare in order to deliver the intensity at a desired strength to best activate the light activated compound used. The specific range of intensity of light is an obvious matter of choice in known parameters to one of ordinary skill in the art in order to deliver the desired intensity to obtain a desired result.

Claims 54-56 and 60-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (WO 99/37236) in view of Bailey et al (5013240) as applied to claim 49 above, and further in view of Cipolla (5879159). The above combination does not show the use of a focusing lens. Cipolla teaches a focusing lens 5, see Fig. 1. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of a focusing lens as shown by Cipolla in order to better deliver the light to the desired site. The specific type of lens used is an obvious matter of choice in the use of known light devices to obtain predictable results to one of ordinary skill in the art.

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The above combination does not show the use of a filter for blocking light. Cipolla teaches a filter 127. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of a filter as shown by Cipolla in order to stop undesirable light, column 5, lines 27-31. The above combination does not state the use of an arc lamp. Cipolla teaches using an arc lamp. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of an arc lamp as shown by Cipolla in order to make use of art known ways of delivering the desired light. The specific type of arc lamp used is an obvious matter of choice in the use of known types of arc lamps to deliver the desired light to obtain the desired results to the skilled artisan. The above combination does not show the range of wavelength used. Cipolla teaches using a wavelength of 430 nm. It would be obvious to one of ordinary skill in the art to modify the above combination to include the wavelength as shown by Cipolla in order to better activate the composition. The specific range of wavelength used is an obvious matter of choice in the use of a known parameter to obtain a desired result to the skilled artisan.

Claims 57-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (WO 99/37236) in view of Bailey et al (5013240) and Hare (5316473) as applied to claim 52 above, and further in view of Cipolla (5879159). The above combination does not show the use of a filter for blocking light. Cipolla teaches a filter 127. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of a filter as shown by Cipolla in order to stop undesirable light, column 5, lines

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27-31. As to claim 58, the above combination does not state the use of an arc lamp.

Cipolla teaches using an arc lamp. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of an arc lamp as shown by Cipolla in order to make use of art known ways of delivering the desired light. The specific type of arc lamp used is an obvious matter of choice in the use of known types of arc lamps to deliver the desired light to obtain the desired results to the skilled artisan. As to claim 59, the above combination does not show the range of wavelength used. Cipolla teaches using a wavelength of 430 nm. It would be obvious to one of ordinary skill in the art to modify the above combination to include the wavelength as shown by Cipolla in order to better activate the composition. The specific range of wavelength used is an obvious matter of choice in the use of a known parameter to obtain a desired result to the skilled artisan.

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (WO 99/37236) in view of Bailey et al (5013240) as applied to claim 49 above, and further in view of Kipke et al (5487662). The above combination shows the structure described above, however, does not show the use of LED's. Kipke teaches using LED's at the base. It would be obvious to one of ordinary skill in the art to modify the above combination to include the use of LED's as shown by Kipke in order to place the source in the desired location.

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Allowable Subject Matter

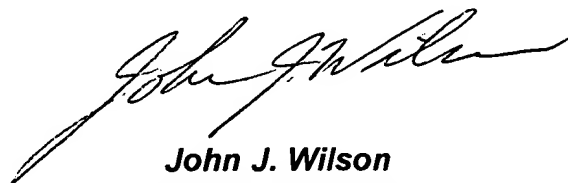
Claim 51 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed October 22, 2003 have been fully considered but they are not persuasive. Applicant's remarks are moot in view of the newly applied reference and rejections.

Conclusion

Any inquiry concerning this communication should be directed to John Wilson at telephone number (703) 308-2699.



**John J. Wilson
Primary Examiner
Art Unit 3732**

jjw

December 12, 2003

Fax (703) 308-2708

Work Schedule: Monday through Friday (flex time)